

General Information Letter: Base income does not include any item excluded from federal taxable income unless a specific statutory provision requires that item to be added back.

May 25, 2005

Dear:

This is in response to your letter (received May 18, 2005), in which you request advice. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

I am requesting an official private letter ruling on the following situation. I am a Bona fide resident of Canada and have tax home in Canada for the complete year (2004). I work for an Illinois based company on salary. I predominantly work in Canada but occasionally am directed by the company to attend conferences/meetings in various states throughout the U.S. I am exempt from FICA taxes. I do not receive a W2 (receive a T4 in Canada).

Federal law requires me to report all of my world earned income. Income I earned while physically in Canada can be excluded from earned income (form 2555). I must pay federal taxes on income earned while physically present in the U.S. because I am a U.S. citizen.

My state tax situation is unclear. Does the Illinois Department of Revenue want...

- 1) to tax on entire world income since it all came from an Illinois source (NOTE: this scenario would owe me IL state tax for a given year even if I never left Canada for the year and therefore had no federal taxable income).
- 2) To tax on the amount that was federally taxable (i.e., amount earned while physically in the U.S.)
- 3) To not tax me at all since the instructions for form 1040NR state that for Line 7 Column B (Illinois portion) "write the amount shown as Illinois wages on the Illinois copy of the W-2 forms you received while you were a nonresident."

- 4) To require that my U.S. based company generate a W-2 for me so I can file as a nonresident of Illinois.

I earned about 10,000 dollars while physically working in the United States for the tax year of 2004.

We assume from your question that neither the treaty between Canada and the United States nor the treaty between France and the United States makes an express provision exempting your income from taxation by Illinois. If this assumption is correct, then you are not exempt from Illinois taxation. However, it does not necessarily follow that you will owe any Illinois income tax.

For an individual, the starting point for computing Illinois taxable income is the individual's "adjusted gross income" computed for federal income tax purposes. See Section 203(a)(1) and Section 203(e)(1) of the Illinois Income Tax Act (the "IITA," 35 ILCS 5/101 *et seq.*), copies of which are enclosed. Section 203(a)(2) of the IITA then requires the individual to add certain amounts to the federal adjusted gross income, none of which are relevant to a nonresident individual whose only contact with Illinois results from a temporary assignment as an employee. Thus, if a treaty exempts all of the compensation paid to one of the employees from his or her federal income tax base, and the employee had no other source of income attributable to Illinois, the employee would have no Illinois base income.

If some or all of an employee's compensation is not exempted from federal income tax, the employee (as a nonresident) will be subject to Illinois income tax on that compensation only if the compensation is "paid in this State" within the meaning of Section 304(a)(2)(B) of the Illinois Income Tax Act (IITA), which provides:

Compensation is paid in this State if:

- (i) The individual's service is performed entirely within this State;
- (ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or
- (iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State. (emphasis added).

You state that you performed some of your services in Illinois in 2004, and the base of operations of your employer is located in Illinois. Under those circumstances, it appears that 100% of any federally-taxed compensation should be allocated to Illinois based on the third of the three tests mentioned above. That amount, plus any Illinois additions and minus any Illinois subtractions, will comprise your Illinois base income. If this calculation results in an Illinois income tax liability, you will need to file an IL-1040 as a nonresident for taxable year 2004. (IITA 502(a)).

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You should ask your employer to prepare a W-2 for your use in filing this return. If they do not provide you with a W-2, you may submit a Form IL-4852 (Substitute For W-2 Form) along with your return.

Please call or write this office if you have any further questions regarding your Illinois Income Tax responsibilities.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax